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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,402

10/23/2003

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Sport.201

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05/13/2008

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

05/13/2008

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES A. VANEK

Appeal 2008-1957
Application 10/692,402
Technology Center 1700

Decided: May 13, 2008

Before BRADLEY R. GARRIS, CATHERINE Q. TIMM, and
ROMULO H. DELMENDO, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of all pending claims (claims 1, 6-8, 11, and 13). (Final Office Action entered March 14, 2006). We have jurisdiction under 35 U.S.C. § 6(b).

Appellant's invention relates to a "mixing wand which is insertable through a pour spout on a container of material to be mixed." (Spec. 1, ll. 6-

7). “[The] collapsible mixing wand includes an elongate shaft having a longitudinal axis therealong, a free end and a mixer attachment end; a mixer assembly attached to the elongate shaft at the mixer attachment end thereof by a fixing mechanism, for rotation relative to the longitudinal axis; wherein, when the elongate shaft is rotated in a first direction, the mixer assembly rotates to an extended condition; and when the elongate shaft rotates in a second direction, the mixer assembly rotates to a substantially collapsed condition.” (Spec. 2, ll. 2-7).

Representative claim 1 reads as follows:

Claim 1. A collapsible mixing wand comprising:

an elongate shaft having a longitudinal axis therealong, a free end and a mixer attachment end;

a mixer assembly attached to said elongate shaft at the mixer attachment end thereof by a fixing mechanism, for rotation relative to said longitudinal axis, wherein said mixer assembly includes a flexible polymer blade set having plural, integrally formed blades, and wherein each blade has a twist intermediate an attachment end which is attached to a blade set hub and a free end;

wherein, when said elongate shaft is rotated in a first direction, said mixer assembly rotates to an extended condition; and when said elongate shaft rotates in a second direction, said mixer assembly rotates to a substantially collapsed condition.

The prior art relied upon by the Examiner to reject the claims on appeal is:

Simmonds	3,223,389	Dec. 14, 1965
Stiffler	4,083,653	Apr. 11, 1978
McClellan	4,872,764	Oct. 10, 1989

Walls

6,419,385 B1

Jul. 16, 2002

The following rejections are before us for review:

Claims 1, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmonds.

Claims 6, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmonds in view of Stiffler and Walls.

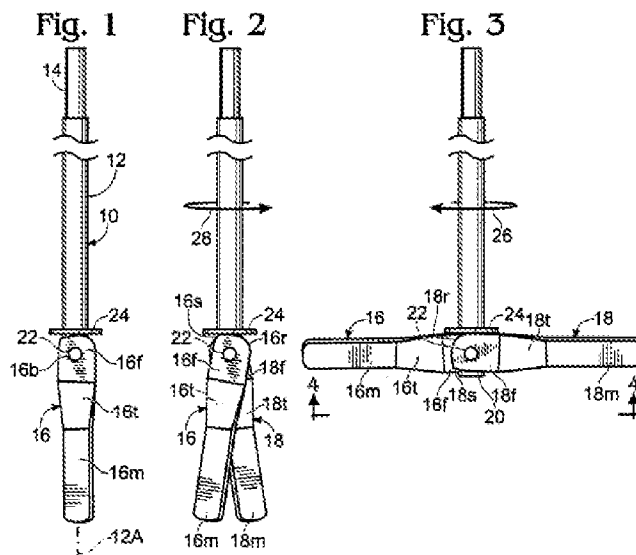
Claims 6, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmonds in view of McClean and Walls.

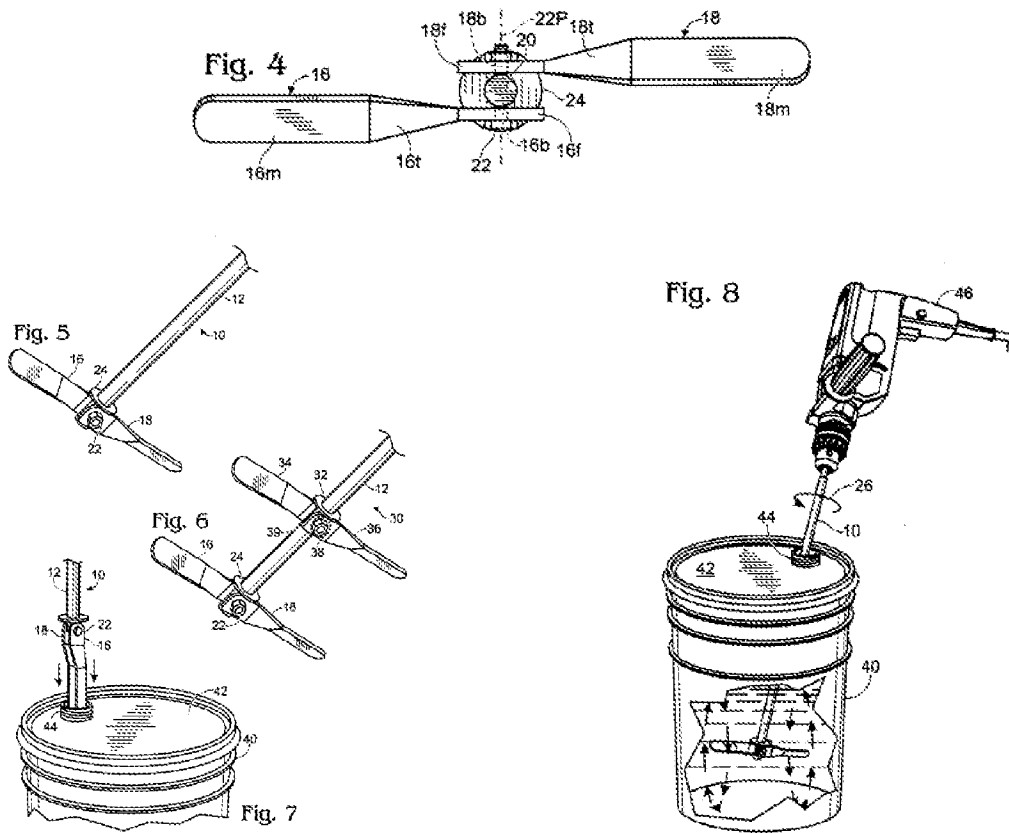
ISSUE

Has the Examiner made out a prima facie case of obviousness with respect to the subject matter of claims 1, 6-8, 11, and 13, properly construing the claims and taking into account all claim limitations?

FINDINGS OF FACT

1. Appellant's Figs. 1-8 are reproduced below:





Figs. 1-5 depict a mixing wand 10 having a shaft 12, with a reduced diameter portion 14 at one end, where “a pair of elongate blades 16, 18, referred to herein as a mixer assembly, are rotatably fixed” to the other end 20 of shaft 12. (Spec. 3, ll. 11-18). Fig. 6 shows “a mixing wand 30 [that] includes the features of mixing wand 10, and further includes a second mixing assembly.” (Spec. 5, ll. 12-13). Fig. 7 depicts “a container 40 [with] a lid 42, having a pour spout 44” and mixing wand 10 “with the blades thereof in a collapsed condition, which allows the blades and shaft to fit through pour spout 44.” (Spec. 5, ll. 19-21). Fig. 8 depicts using a power drill 46 attached to

wand 10 to mix contents of a container 40 with the container's lid 42 in place. (Spec. 6, ll. 2-3).

2. Appellant's Fig. 9 is reproduced below:

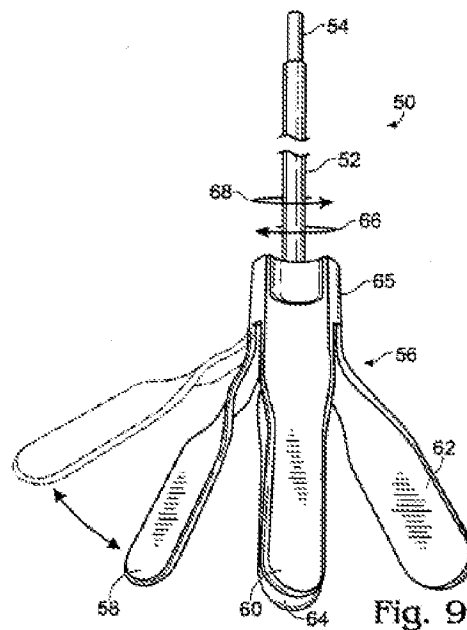


Fig. 9 depicts “a shaft 52 [having] a free end 54 and . . . a polymer blade set 56 fixed to the other end.” (Spec. 6, ll. 13-14).

3. The only description in Appellant's Specification of a flexible polymer blade set having an integrally formed structure is as follows:

Another embodiment of the mixing wand of the invention is depicted in Fig. 9 at 50. In this embodiment, a shaft 52 has a free end 54 and has a polymer blade set 56 fixed to the other end thereof. Blade set 56 is formed of PVC-type polymer as a unitary, integrally formed structure. In this embodiment, the blades 58, 60, 62 and 64, of the mixing assembly are formed with a hub 65, and include a twist intermediate the hub and the free ends thereof. As in the case of the first embodiment, when shaft 52 is rotated in the direction of arrow 66, the blades

extend under centrifugal force and as a result of resistance from the material being mixed. When shaft 52 is rotated in the direction of arrow 68, the blades collapse to a relaxed position, which is suitable for low speed mixing, and, when shaft rotation is stopped, for entry and exit from the pour spout of a container. [Emphasis added].

(Spec. 6, ll. 12-21).

4. Appellant's Specification does not describe the embodiments of Figs. 1-8 as including a blade set made from a flexible polymer and having "plural, integrally formed blades" (claim 1), as required by the claims. (Spec. 1-14).

5. The Examiner found that Simmonds discloses "a blade set which is integrally connected and formed fixedly to the hub 7 via a pin pivot point which provides a pivotal rotation of the blade set 8,8 from the collapsed condition, to a rotated condition, when operated in a rotation or counter rotation of the shaft." (Ans. 3, ll. 16-20).

6. Simmonds discloses a mixer having separately pivoted mixing paddles (i.e., blades), with each paddle mounted in a slotted head formed at the end of a shaft. (Col. 2, ll. 11-13; Fig. 1).

PRINCIPLES OF LAW

Adopted claim construction must be "reasonable in light of the totality of the written description." *In re Baker Hughes*, 215 F.3d 1297, 1303 (Fed. Cir. 2000).

ANALYSIS

The Rejections of Claims 1, 7, and 8 Based on 35 U.S.C. § 103 Over Simmonds.

The Examiner alleges that Simmonds discloses “a blade set which is integrally connected and formed fixedly to the hub 7 via a pin pivot point which provides a pivotal rotation of the blade set 8,8 from the collapsed condition, to a rotated condition, when operated in a rotation or counter rotation of the shaft.” (FF 5). According to the Examiner, the subject matter of claims 1, 7, and 8 “is inclusive of *all embodiments* of appellant’s figures 1-9” and that, therefore, Simmonds “discloses all of the recited subject matter as defined within the scope of the claims with the exception of the *blade set* being a *polymer* blade set” (Ans. 3-5).

Appellant illustrates different embodiments of the invention in Figs. 1-9 of the Specification. (FF 1, 2). Appellant does not dispute that the prior art describes the embodiments shown in Figs. 1-8. (Reply Br. 1, ll. 8-11). Rather, Appellant’s main argument is that the claimed invention has been limited to correspond to the embodiment of Fig. 9 in view of the claim limitation “a flexible polymer blade set having plural, integrally formed blades,” and thus the Examiner’s position is in error. (Reply Br. 1-3). Specifically, Appellant argues that the Examiner’s finding of an “integrally *connected* blade set” in the prior art is not the “integrally *formed* blade set” recited in the claim, nor its equivalent. (Reply Br. 2, ll. 8-13).

We agree with Appellant.

Claim 1 requires “a flexible polymer blade set having plural, integrally formed blades.” (Claim 1). In the Specification, the only

description of a flexible polymer blade having an *integrally formed* structure is in the discussion of Fig. 9:

Another embodiment of the mixing wand of the invention is depicted in Fig. 9 at 50. In this embodiment, a shaft 52 has a free end 54 and has a *polymer blade set 56 fixed to the other end thereof. Blade set 56 is formed of PVC-type polymer as a unitary, integrally formed structure. In this embodiment, the blades 58, 60, 62 and 64, of the mixing assembly are formed with a hub 65, and include a twist intermediate the hub and the free ends thereof. As in the case of the first embodiment, when shaft 52 is rotated in the direction of arrow 66, the blades extend under centrifugal force and as a result of resistance from the material being mixed. When shaft 52 is rotated in the direction of arrow 68, the blades collapse to a relaxed position, which is suitable for low speed mixing, and, when shaft rotation is stopped, for entry and exit from the pour spout of a container. [Emphasis added].*

(FF 3). This description reasonably informs one skilled in the relevant art that the claim limitation in question (i.e., “a flexible polymer blade set having plural, integrally formed blades”) requires a blade set that is made of one piece, and thus, would not encompass the integrally connected blades as described in Simmonds. Here, we find it significant that the Specification does not describe the embodiments shown in Figs. 1-8, which are similar to that of Simmonds, as including a blade set made from a flexible polymer and having “plural, integrally formed blades” (claim 1), as required by the claims. (FF 4). Thus, the Examiner erred in construing the claims in a manner contrary to Appellant’s written description. *In re Baker Hughes*, 215 F.3d 1297, 1303 (Fed. Cir. 2000) (“Although the Director points to various parts of the written description that describe hydrocarbons as gases and liquids, nowhere does the written description use the terms ‘evolution’

or ‘liberation’ to describe separation of hydrogen sulfide from a gaseous hydrocarbon material. . . . We therefore conclude that the Board adopted a construction of the claim beyond that which was reasonable in light of the totality of the written description . . . to include gaseous hydrocarbons.”).

Simmonds discloses a mixer having separately pivoted mixing paddles (i.e., blades), with each paddle mounted in a slotted head formed at the end of a shaft (FF 6). However, it would be clear to one of ordinary skill in the art that the claimed collapsible mixing wand could not properly be construed to cover the collapsible mixing wand taught by Simmonds. While finding the embodiments of Figs. 1-8 disclosed in the prior art, the Examiner did not rely on any evidence that the embodiment of Fig. 9, having a “flexible polymer blade set having plural, integrally formed blades,” was known or suggested in the prior art. (Ans. 2-20).

The Rejections of Claims 6, 11, and 13 Based on 35 U.S.C. § 103 Over Simmonds in View of Stiffler and Walls and Over Simmonds in View of McClean and Walls.

The rejections of claims 6, 11, and 13 over Simmonds in view of Stiffler or McClean, and Walls, are reversed for the same reasons discussed above with respect to claims 1, 7, and 8. Stiffler, McClean, and Walls do not cure the deficiencies in the Examiner’s construction of the claims. (Ans. 2-20).

CONCLUSION

On this record, the Examiner has not established a prima facie case of obviousness. The Examiner's rejections of claims 1, 6-8, 11, and 13 are reversed.

REVERSED

PL initials:
sld

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